IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

MONDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND SEVEN

PRESENT

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.18404 OF 2000

Between:

S.N.Mutually Aided Cooperative Housing Society Limited
Rep. by its Secretary D.Seetha Ramaiah.

.... PETITIONER

AND

The Municipal Corporation of Hyderabad,
Rep. by its Commissioner, Town Planning Section,
Tank Bund, Hyderabad, and others.

....RESPONDENTS

THE HON'BLE SRI JUSTICE
C.Y.SOMAYAJULU

WRIT PETITION NO.18404 OF 2000

O R D E R

-

-

Petitioner purchased Ac.30-00 gts. of land in Sy.No.327 Paiki at Shaikpet Revenue Village, Golconda Revenue Village. To the east of the land of the petitioner society and to the north of the village there is a burial ground adjoining Errakunta Tank of Shaikpet village. The case of the petitioner society is that as some persons are proclaiming that they would convert its land into a burial ground, it submitted a representation to the first respondent Corporation on

04-12-1991 bringing to its notice about the attempts of others to convert its land into a burial ground, and as no action was taken on that representation by the first respondent some dead-bodies were again buried in its land in May 1994 it again sent another representation dated 11.05.1994 to the first respondent bringing to its notice about the said fact, and so, the first respondent Corporation addressed a letter to the Mandal Revenue Officer (third respondent) and requested him to verify the boundaries of the burial ground as per the town survey records to enable it to take further action, but did not pursue the matter thereafter. Again when a dead-body was brought for burring in its land in February, 1995, its members prevented the burial and sent another

representation dated 16-02-1995 seeking permission to enclose its land by a compound wall to prevent others burying the dead-bodies in its land, but no action was taken on that representation. When some persons from Shaikpet village tried to construct samadhis in its land on 15-09-2000, as its members prevented them from making such constructions, they withdrew from that place abusing them in a foul language and threatening them with dire consequences. On 16.09.2000 they re-assembled and wanted to proceed with the construction of samadhis, when they gave a Police report complaining about the high-handed action those persons withdrew from that place. Hence, this petition seeking a direction to the first respondent to accord permission to it to construct a compound wall enclosing its land.

2. In his counter-affidavit filed on behalf of the first respondent the Assistant City Planner pleaded ignorance of the attempts made by the third parties to encroach into the land of the petitioner and took a plea that petitioner has to take steps to protect the land of its members and that it is not the duty of the respondents 1 and 2 to protect the land of the petitioner or its members. When the proposal for construction of a compound wall, submitted by the petitioner society, was examined it came to light that the boundaries and the area shown in the plan was not tallying with the boundaries shown in the tentative layout dated 12.10.1990, and so, that fact was intimated to the petitioner through the letter dated 26.08.2002 informing the petitioner that when the existing graveyard land is in a triangular shape, the plan submitted by it for the proposed construction of compound wall, that land was shown in a zigzag shape, asking it to submit a revised plan in conformity with the boundaries and area earmarked for the burial ground in

the tentative layout. Hence, relief as claimed by the petitioner against respondents 1 and 2 cannot be granted.

3. No counter-affidavit is filed on behalf of the third respondent.

4. The contention of Sri P.V.Vidyasagar, learned counsel for the petitioner is that inasmuch as Sections 566 to 572 of the Act deal with the disposal of the dead and since no new place for disposal of dead can be opened without permission of the Commissioner, it is the duty of the first respondent to see that no place other than the place earmarked as a burial ground, is being used for disposal of the dead, and so, a direction may be given to respondents 1 and 2 to see that no dead bodies are buried in the land belonging to the petitioner or its members. It is his contention that if the petitioner is granted permission to construct a compound wall enclosing its and its members lands, it would construct a compound wall and thereby prevent others from encroaching into its and its members lands for burying the dead bodies and that the petitioner has no objection to leave that portion of the land in which the dead bodies, if any, are already buried, and so, respondents 1 and 2 may be directed to consider the application for construction of a compound wall by the petitioner around its and its members land.

5. The contention of the Standing Counsel for respondents 1 and 2 is that as and when the petitioner society were to submit an application, it would be considered and disposed as per the provisions of the Act.

6. In view of the submissions made and as no provision in the Act casting a duty on the Municipal Corporation to see that dead-

bodies are not buried in places, which are not earmarked as a burial ground, and as the Act only contemplates imposition of fine on persons making use of places other than those earmarked as burial ground for burial of the dead, no direction can be given to the first respondent to see that no dead bodies are buried in the land belonging to the petitioner. If and when dead bodies are buried in its land, the petitioner can make a representation to the first respondent, whereupon it shall take appropriate action as the Act against the erring person.

7. The petitioner owing land adjacent to the burial ground is impliedly admitted in the counter-affidavit filed on behalf of the first respondent. In order to protect its land, the petitioner has a right to construct a compound wall around its site. So, in the event of the petitioner submitting a fresh application for construction of a compound wall around its land, respondents 1 and 2 shall consider that application as per the provisions of law and permit the construction of the compound wall, so that, the land of the petitioner is not used for burial of the dead.

With the above direction, the writ petition is disposed of. No order as to costs.

JUSTICE C.Y.SOMAYAJULU

31st DECEMBER, 2007
PGS

THE HONOURABLE SRI JUSTICE
C.Y.SOMAYAJULU

W.P.NO.18404 OF 2000

31st DECEMBER8, 2007